IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Civil Application Stamp No. 2451 of 2007
in
Writ Petition No 5038 OF 2007

Mahatma Gandhi Missions Medical
College Kamothe, Navi .Mumbai ..Applicants

vs

Abhishek Sharma and ors ..Respondents

Mr S.H. Aney Senior Advocate with Mr. K.Y Mandlik and Mr Ranjit Raja Bhonsale for applicants.
Ms Solomi Desai i/b M/s M.P.Vashi & Asson for respondents.

With

Notice of Motion No.463 of 2007
in
(OS)Writ Petition No.1200 of 2007.

AMI Dedhia and ors ... Petitioners

vs

Shikshan Shulka Samiti and ors ... Respondents

Mr. N.H. Seervai i/b Hariani and Co for the petitioners

with

Notice of Motion No. 320 of 2007
in
(OS)Writ Petition (L) No.916 of 2007

Aniket Kugaonkar and ors. ..Petitioners

vs

Shikshan Shukla Samiti and ors ..Respondents

Mr S.H. Aney Senior Advocate with Mr. Vineet Naik i/b Kartikeya

Association for petitioners.

Mr. A.A. Kumbhakoni Associate Advocate General for State in all matters.

CORAM: SWATANTER KUMAR, C.J., &
Dr.D.Y.CHANDRACHUD, J.

Order reserved on 19th Sept. 2007
Order pronounced on 27th Sept.2007

ORDER: (SWATANTER KUMAR, C.J.)

1. Different parties in the above writ petitions have taken out civil application/ notices of motion for clarification of the order dated 6th September 2007 and for issuance of other directions. Various writ petitions have been filed by the students as well as the Institutions questioning the legality and correctness of the fee structure recommended by the Committee appointed by the Court. According to the students, the fee structure is unreasonably high while according to the managements the fee fixed is considerably low. The writ petitions are pending for final disposal and relate to the period 2006-2009. Various interim orders have been passed by different Benches of this court in regard to the quantum of fee, which the students are required to pay during the pendency of the petitions

2. Mr. Vashi, arguing for the students, stated that in terms of order dated

6th September 2007 passed by this court, the students have paid the fee, that is the normal fee and not enhanced fee. However, they have paid even enhanced fee for the period 2006-2007. He also contends that if the students are compelled to pay the fee fixed by the Committee, which is every exorbitant, it will be a great burden on the students as the fee fixed is Rs.1,33,700/- in the previous term while the revised fee fixed for the period of 3 years is Rs.2,33,380/-. The fee structure fixed by the Committee is questioned by the petitioners, inter alia, on the ground that the costing has not been inadequately provided for. The infrastructure charges including utilisation of the doctors/ faculty for the college and the hospitals is not proportionate and the accounts of these concerns have not been examined. On the other hand the contention raised on behalf of the management of different medical colleges is that the students should be called upon to pay the fee fixed by the Committee as without that they cannot effectively run their colleges. According to them, the charges being bare minimum do not leave any leverage with the college to further augment infrastructure and improve education standard. It is also vehemently argued that the students had given undertaking to the court in furtherance to the interim orders passed to that effect that they would pay the fee determined by the committee during the

pendency of the petitions. On behalf of some of the colleges a contention was also raised that the defaulter students are taking undue advantage of the interim orders passed by the court and pendency of the petitions. They have not paid the fee and in violation of the orders of the court, the Registrar of the University has even declared their results, thus placing the management in a great disadvantageous situation.

3. We have already noticed that various interim orders were passed by different Benches of this Court and in none of the orders the students were ever given liberty to continue their academic course without payment of fee. As we are concerned with the academic year 2006-2007 onwards, we may first refer to the order dated 6th February 2007 passed by the Division Bench of this court in Writ Petition No.5655 of 2006 where the court directed as under:

> "By an order dated 23.8.2006 which we have reproduced earlier, the admissions were granted subject to the students giving an undertaking to this court that they would pay the fees as fixed by respondent No.2. Respondent No.2 has since fixed the fees. All students who are admitted pursuant to the undertaking given to this court and/or or colleges will be bound to pay the said fees in the first instance within a period of six weeks from today. Needless to say that if the students or colleges are aggrieved by the fixation of fees, it will be open to the petitioners as also the management of the

colleges to challenge the said fees subject tot he conditions that the students will have to first pay the fees and the management will have to refund the excess amount, if any"

4. Thereafter another Division Bench in its order dated 23rd August 2007 in Writ Petition No. 5656 of 2006 and others passed somewhat similar order with the following directions:

> "we are conscious that this is by way of interim arrangement. Since the admissions are closing today for the first round, we permit the students seeking admission today, to pay the fee as indicated by the Shikshan Shulka Samiti. This is however, subject to both the parents of the students giving an undertaking to pay the fees which will be finally determined in writing to the college. This undertaking shall be tendered while seeking admission today itself. A copy of the said undertaking shall also be furnished to this court on Monday 28th August 2006. This undertaking shall be given by the students who are taking admission in Bombay and in the vicinity of Bombay, by 28th August, 2006 and all other students from rest of Maharashtra shall furnish it within a period of two weeks from today.
>
> We also make it clear that this order will not apply to the students who have already take admission. It is made clear that the colleges, in which students are taking admission, shall take undertaking as mentioned in this order and direct the students to furnish a copy of the undertaking in this court within a period of one week

5. Yet in another writ petition, being Writ Petition (L) No.1200 of 2007, the Court directed the students to pay the fee fixed by the Committee. However, for the current year the management has demanded the

fee from the students with leave of the court. It was obviously in view of the fact that the cases were fixed for final disposal. Thereafter the order dated 6th September 2007 was passed which reads as under:

> "We have heard the learned counsel appearing for the parties. Subject to the students in all the petitions, pending before this court, paying the entire demanded fees for the year 2006-2007 as well as normal fee for the year 2007-2008, till the next date of hearing their names should not be struck off the record nor any other action would be taken against them. The entire amount shall be paid within four weeks in two equal installments.
>
> S.O to 17th September 2007 for further directions"

6. In the above referred order dated 6th September 2007 undoubtedly two expressions are used by the Court, one 'demanded fees for the year 2006-2007' and the other 'normal fee for the year 2007-2008'. There has been some element of ambiguity in this order and the students interpreted the order so as to say that for the year 2007-2008 they have to pay fee which was earlier fixed and not the subsequent fee fixed by the Fee Structure Committee for the year 2006-2007 onwards. According to the management and the State the fee fixed by the Committee alone can be directed to be paid as the Court would not normally disregard the fixation of the fee by the Committee and in any case at the interim stage. There is no doubt

that various controversies raised on behalf of the parties involve certain relevant issues on merit, but they have to be examined at the final hearing of the above petitions which are fixed on 14th October 2007.

7. In face of the undertaking given by the students and the consistent view taken by the different Benches of this Court, we have no hesitation in clarifying the order that the liability of the students to pay the fee for the Academic Year 2007-2008 would be the fee fixed by the Committee and not the fee which is payable prior to 2006-2007. In the facts and circumstances of the case and the position above explained, it may not be appropriate for the Court at this stage to come to a conclusion that the fee fixed by the Committee is unreasonable or suffers from the defect of taking impermissible components into consideration. In order to protect the interest of both parties and to avoid prejudice to either of them, we issue the following directions:

a) The order dated 6th September 2007 is clarified to the extent that the fee payable by the students for the Academic Year 2007-2008 shall be the fee fixed by the Fee Structure Committee.

b) The fee shall be paid by the students in three equal monthly installments, first being payable by 30th September 2007 and the remaining two installments shall be paid by 7th

of each succeeding month. This shall be treated as last chance for the students to clear the dues to their respective colleges.

b) In the event of the students succeeding in the writ petitions and it is found that the management has charged excess fee and in the meanwhile the student has cleared the course, the management shall be liable to refund the excess fee with simple interest at the rate of 9% p.a., on the excess fee amount.

c) The results of students who have not paid the fee so far and do not pay the same by 30th September 2007, shall not be declared, irrespective of the year of the course in which they are studying and the University shall not issue them mark sheet/degree certificates. However, in the case of those students who are continuing the course, the fee paid by them shall be adjusted in the next term fee payable by them.

d) These directions and orders are without prejudice to the rights and contentions of the parties on the merit of the case.

The above writ petitions are already listed for final hearing on 14th October 2007, when subject to overnight part-heard matter, the petitions shall be heard on day to day basis if the Board so permits

In terms of the above directions, the civil application and the notices of motion stand disposed of with no order as to costs.

CHIEF JUSTICE

Dr. D.Y.CHANDRACHUD, J